

### **REMARKS**

With entry of the present amendment, claims 1-15 and 18-21 are pending. Claims 16-17 are canceled. Claims 11-14, 20 and 21 are allowed.

Claims 18 and 19, which refer to specific cancers, are amended so as to be in independent form. No new matter is believed to be presented by the foregoing amendments to the claims.

Entry of this amendment and reconsideration of the claims, as amended and in view of the following remarks, is requested.

#### **The Section 112 Amendments**

Claims 16 and 17, both of which are method of use claims, are rejected under 35 USC § 112, first paragraph. These claims are herein canceled and this rejection is thus moot. Applicants wish to note for the record, however, their disagreement with the PTO's conclusion on page 5 of the Office Action that a skilled artisan in the context of the instant invention is a "Board Certified physician in oncology with an MD degree and several years of experience."

#### **The Double Patenting Rejection**

Claims 1-10 and 15-19 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatenable over claims 1-10 and 16-20 of copending application USSN 10/689,438 (CD 22213). As claims 1-10 and 16-20 of USSN 10/689,438 are not allowed, applicants respectfully submit that this rejection is premature. Applicants request that the double patenting rejection be held in abeyance until there is an indication of allowability of the allegedly overlapping claims in both the instant case and USSN 10/689,438, at which point it can be assessed whether the allowed claims may in fact overlap. Without knowing what subject matter ultimately

is allowed in both cases, applicants cannot fairly assess the propriety of the double patenting rejection. Applicants submit that if claims 1-10, 15 and 18-21 of the instant application as well as claims 1-10, 16-17 and 21 of USSN 10/689,438 are allowed in their current form, Applicants will tender a terminal disclaimer in the latest case that is allowed.

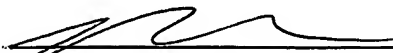
### **CONCLUSION**

The foregoing amendment is fully responsive to the Office Action issued September 2, 2005. Applicants submit that claims 1-15 and 18-21, as amended, are allowable. Early and favorable consideration is earnestly solicited.

If the Examiner believes there are other issues that can be resolved by telephone interview, or that there are any informalities remaining in the application which may be corrected by Examiner's Amendment, a telephone call to the undersigned attorney is respectfully solicited.

Applicants believe that no fee is due with this communication. However, should the Patent Office determine that a fee is owed, or a credit is due to applicant, the Patent Office is hereby authorized to charge any required fees, including any extension of time and/or excess claim fees, or credit any overpayment, to applicant's Deposit Account 08-2525 as appropriate.

Respectfully submitted,

  
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